No. 80-824

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

POLK COUNTY; POLK COUNTY BOARD OF SUPERVISORS; POLK COUNTY OFFENDER ADVOCATE; and MARTHA SHEPARD, Individually and through her official capacity as an Agent or Assistant for Polk County,

Petitioners,

v.

RUSSELL RICHARD DODSON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHT CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION

John D. Hudson
Attorney for Respondent

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(515) 282-6803

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v.

RUSSELL RICHARD DODSON

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF RESPONDENT IN OPPOSIGION

QUESTIONS PRESENTED

1. Whether the Court of Appeals for the Eighth Circuit erred in holding that a County employed Public Defender acts under color of State law in representing indigent defendants and is subject to suit under 42 U.S.C. §1983.

2. Whether the Court of Appeals for the Eighth Circuit erred in holding that in suits brought under 42 U.S.C. §1983, the County employed Public Defender enjoys a qualified immunity for actions taken while representing indigent clients.

OPINION BELOW

The opinion of the Court of Appeals (Pet. App. 1-29) is reported at 628 F.2d 1104. The opinion of the United States District Court for the Southern District of Iowa is reported at 483 F. Supp. 347, and is reproduced in Petitioner's Appendix B, 1-12.

JURISDICTION

The judgment and opinion of the Court of Appeals for the Eighth Circuit was entered on August 26, 1980, and the Petition for Certiorari was filed within ninety days of that date. The

Court's jurisdiction is invoked under 28 U.S.C. §1343(3).

STATEMENT OF THE CASE

The Respondent filed a Pro Se Complaint in the United States District Court for the Southern District of Iowa, alleging that Martha Shepard, an attorney in the Polk County Offender Advocate's Office, failed to adequately represent him in an appeal to the Iowa Supreme Court of a robbery conviction. The Complaint alleged that Dodson had been convicted of robbery in the Iowa State Court and that Ms. Shepard was appointed to represent him on Appeal. She later moved to withdraw as counsel and to have the Appeal dismissed as frivolous, pursuant to Iowa Rule App. P. 104. The Respondent alleged that Ms. Shepard's actions deprived him his right to counsel, inflicted on him cruel and unusual punishment, and arbitrarily denied him his State-created right to appeal, in violation of the due process clause of the 14th Amendment. The Complaint set out pendent claims for malpractice and breach of an oral contract to prosecute the Appeal.

The Polk County Offender Advocate and the Polk County Board of Supervisors, also named as Defendants, were alleged to be responsible for Ms. Shepard's actions because they established rules and procedures for her to follow in handling criminal appeals. The Complaint sought both injunctive relief and monetary damages.

The District Court, the Honorable Harold D. Vietor presiding, dismissed the Petition for lack of State action. The claims against Polk County and its Board of Supervisors were dismissed because, in the opinion of the District Court, the Complaint failed to allege the requisite personal involvement with unconstitutional conduct. The pendent State claims were dismissed as well.

Respondent filed a timely Notice of Appeal, and counsel was appointed to represent him and address the issue of whether or not a Public Defender is subject to suit under 42 U.S.C. §1983.

The Eighth Circuit Court of Appeals reversed the decision of the District Court and held that an attorney in a County or State funded Public Defender's office acts under color of State law in representing indigent defendants. The Circuit Court also held that the Public Defender enjoys a qualified immunity from liability and that the Complaint alleged sufficient State action against the Polk County Board of Supervisors so as to meet the jurisdictional requirements of §1983. The Circuit Court further held that the Complaint did not sufficiently allege the necessary involvement of Polk County and dismissed the action as to Polk County, noting that Respondent should be given opportunity to amend his Complaint. The denied prayer for injunctive relief was affirmed, as the Court found it to be in the nature of habeas corpus, and it was conceded that State remedies had not been exhausted.

ARGUMENT

Respondent cannot deny that there is a considerable split of authority in the Courts of Appeal, as recited in Petitioner's Brief. Respondent, however, submits that the decision of the Court of Apeals is the first time the issue of Public Offender immunity was addressed by an Appellate Court following this Court's decision in Ferri v. Ackermann, 444 U.S. 193 (1979). Ferri held that an attorney appointed by a Federal Court to represent an indigent defendant is not entitled to absolute immunity as a matter of Federal law. Clearly, the role of appointed counsel is similar to that of the State-financed Public Defender, and in light of this Court's decision in Ferri, the opinion of the Appeals Court is mandated on this point.

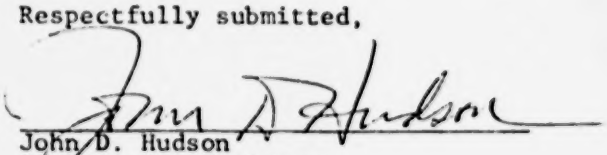
On the issue of whether the Public Defender acts under "color of State law" in representing indigent defendants, there is clear authority in support of the Appeals Court decision. See Robinson v. Bergstrom, 579 F.2d 401 (7th Cir. 1978) (per curiam). The opinion of the Court below accurately comports with contemporary

standards of State action and was properly decided. A useful discussion of this issue is found in Note, "Liability of Public Defenders Under Section 1983," 92 Harvard Law Review 943 (1979).

CONCLUSION

For the reasons advanced in this argument and those in the opinion of the Court below, Respondent prays that the Petition for Writ of Certiorari be denied.

Respectfully submitted,



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ATTORNEY FOR RESPONDENT

CERTIFICATE OF FILING

I, John D. Hudson, hereby certify that I will file the foregoing Brief of Respondent in Opposition by depositing ten copies thereof in the United States Mail on February 6, 1981, addressed to the Clerk of the Supreme Court of the United States, Washington, D.C. 20543.

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ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I, John D. Hudson, hereby certify that on the 6th day of February, 1981, three copies of the Brief of Respondent in Opposition were mailed, postage prepaid, to each of the following persons at their respective addresses:

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RUSSELL RICHARD DODSON,

Respondent

MOTION TO PROCEED IN FORMA PAUPERIS

COMES NOW the Respondent, Russell Richard Dodson, and pursuant to Supreme Court Rule 46(1), moves the Court for leave to Proceed In forma Pauperis. Petitioner states that leave to Proceed In Forma Pauperis was granted by the Eighth Circuit Court of Appeals.

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ATTORNEY FOR RESPONDENT

CERTIFICATE OF FILING

I, John D. Hudson, hereby certify that I will file the foregoing Motion to Proceed In Forma Pauperis by depositing five copies thereof in the United States Mail on February 6, 1981, addressed to the Clerk of the Supreme Court of the United States, Washington, D.C. 20543.

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CERTIFICATE OF SERVICE

I, John D. Hudson, hereby certify that on the 6th day of February, 1981, two copies of the Motion to Proceed In Forma Pauperis were mailed, postage prepaid, to each of the following persons at their respective addresses:

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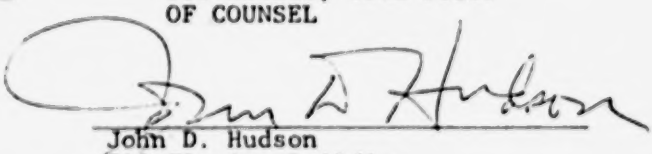

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